

Limited Residential Lodging Act Issue Matrix¹

Issue: Is legislation necessary?	
No	Rationale: Relates to local land use issues that should remain subject to local control; localities currently have all the tools they need to enforce zoning restrictions, establish registration schemes, and/or collect taxes
Yes	Rationale: Need for standardization across the state, which could take many forms -- standard registration process, standard rules & limitations, and/or centralized tax collection

Issue: Applicability of potential legislation	
Primary residence only	Approach in HB 812/SB 416
Primary residence & secondary/rental homes	
Any residential property	

¹ The issues and approaches set forth in this matrix were drawn from issues and concerns set forth by a variety of stakeholders. The matrix is not an exhaustive categorization of all issues related to short-term rental discussions, but attempts to capture the key policy issues that have been raised during discussion.

Issue: Should local authority be preempted?

No	Rationale: localities generally have authority to regulate land use. Short -term rentals can change the nature of the property, and localities should have the authority to regulate this usage.		
Yes	Rationale: The General Assembly has the power to restrict local authority when deemed in the best interest of the Commonwealth.		
	Should locality have authority to require insurance?	Permissive?	SB 416 allowed up to \$500,000 in insurance
		Mandatory?	
	Should locality have other specific grants of authority?	List of optional local regulations?	HB 812 (as introduced) provided a list of local optional regulation, including noise, signage, occupancy, etc.
		General statement that general noise, health, safety ordinances apply, so long as not applied discriminatorily to limited lodging?	SB 416 included this language

Issue: Should business license (BPOL) statute be clarified?

Note: The renting of property, other than by a hotel, boarding house, B&B, etc., is exempted from BPOL taxes. However, localities that imposed a BPOL tax on this practice prior to 1974 are grandfathered. There are approximately 24 localities that may impose a license tax on a person renting lodging on his property. Some localities that are not grandfathered, however, have also been imposing a BPOL tax on short-term rentals, presumably based on the argument that renting a room in a house converts its use to a boarding house or B&B.

No -- it is up to each locality as to how/when to impose a license tax on this practice

Yes -- the law should clarify that a license tax cannot be imposed for an occasional rental

HB 812 and SB 416 both include language that would prohibit the imposition of BPOL tax if property is rented fewer than 45 days per year. If this is the agreed upon approach, discussion is likely necessary as to whether 45 days or less is the appropriate threshold.

Issue: Do online hosting platforms perform services/activities that are currently required to be licensed under Virginia real estate licensing laws?

No

Yes

There are ongoing discussions/debate among stakeholders as to whether online hosting platforms that facilitate the renting of property are serving a function that is currently required to be licensed under Virginia law.

Issue: Inapplicability of legislation to contract

There seems to be **general agreement** that legislation would not supersede contracts (this would include contracts governed by the Landlord Tenant Act), recorded declarations and covenants, declaration of common interest communities, condominium acts, etc.

Language in SB 416

Issue: Should localities be allowed to require registration for persons offering short-term rentals?

No

Permissive?

Mandatory?

Yes

If local authority to regulate short-term rentals is preempted, all localities would be required to establish a registration systems for persons offering properties for short-term rentals. If localities have the ability to prohibit short-term rentals, only to those localities that allow the practice would be required to establish such registration system.

Issue: If there is registration, what should it look like?		
Single system of registering name, address, contact info, etc.		
<p>Tiered System:</p> <ul style="list-style-type: none"> • Tier 1: De Minimis -- Less than X days/year rental of primary residence: No registration required <ul style="list-style-type: none"> ○ No simultaneous bookings ○ No special use permits required • Tier 2: Limited -- X-180 days/year rental of primary residence <ul style="list-style-type: none"> ○ No simultaneous bookings ○ Local, ministerial registration ○ Demonstration of residence ○ Registration may be revoked after three substantial violations/year ○ Other local registration elements similar to HB 812 (as introduced) ○ Some local zoning authority • Tier 3: Non-Owner Occupied (vacation homes, multi-unit buildings) <ul style="list-style-type: none"> ○ Maintain status quo of local regulatory authority <ul style="list-style-type: none"> ▪ Exemption for short-term rental of apartments that are unoccupied but available for long-term rentals, not to exceed 25% of units 	<p>Related issue: If there is registration, should property owner be exempted from registration if property is managed by a real estate licensee?</p>	<p>Whether or not a tiered system is appropriate is related to issue of what legislation should cover -- rentals of primary residences, rentals of second homes/vacation homes, or all rental property.</p> <p>If a tiered system were adopted, the number of days that would trigger de minimis (Tier 1) versus limited (Tier 2) registration is subject to discussion. This could range anywhere from 14 days to 45 days (or more).</p>

Issue: Should hosting platforms be able to collect & remit state and local taxes centrally to Department of Taxation?

No			Rationale: Local taxes should be remitted to the locality, not to the state.
Yes	Is registration statewide?	No - Register with Department of Tax to collect in localities of its choice	<p>A hosting platform may register with the Department of Taxation to collect and remit local transient occupancy taxes (and related taxes/assessments) & state/local sales taxes to the Department of Taxation. Department of Tax would distribute local taxes back to the locality.</p> <p>If this is the approach adopted, collection/remittance of local taxes can be drafted like collection/remittance of local sales tax. It is remitted to the Department of Taxation, and then deposited into accounts for each locality. The money never flows through the General Fund, and thus is not subject to appropriation.</p> <p>A "kill switch" could also be included...in case the money every were subject to appropriation, use of the money for anything other than sending it back to the localities would cause any legislation adopted related to short-term rentals to expire.</p>
		Yes- Registration with Department of Tax is statewide registration	
	Are there prerequisites to registration?	No	
		Yes - Hosting platform must have a delisting process and a complaint line in order to register to collect and remit the taxes	

Issue: Do standard tax confidentiality provisions (§ 58.1-3) apply to information submitted to Department of Tax?

Note: § 58.1-3 establishes general confidentiality provisions for any tax information held by the Department of Taxation. Generally, Tax may share relevant tax information about taxpayers with local taxing authorities.

No -- information submitted by hosting platform to Department of Tax may not be shared with localities	Reflected in HB812 and SB416
Yes -- information may be shared in accordance with § 58.1-3	

Issue: Who may audit information submitted by hosting platform?

Department of Tax only	Language in HB 812 & SB 416 Department of Tax may audit the hosting platform, but not any individual taxpayer
Department of Tax and localities	